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FULL POWERS OF THE HEAD OF A PRE-TRIAL INVESTIGATION BODY IN THE COURSE OF A SPECIAL TASK TO DETECT AN ORGANISED GROUP OR CRIMINAL ORGANISATION'S CRIME

Abstract. Purpose. The purpose of the article is to study certain aspects of exercising the full powers of the head of a pre-trial investigation body in the course of a covert investigative (search) action such as a special task to detect criminal activities of an organised group or a criminal organisation. **Results.** The article studies the particularities of exercising the full powers of the head of a pre-trial investigation body in the course of a special task to detect criminal activities of an organised group or a criminal organisation. The author proves the need to define a clear scope of a special task. It is emphasised that keeping reliable information about a person secret should consist of changing (i.e., presenting in a false, incorrect form) the person's data and the purpose of his/her infiltration into the relevant organised group or criminal organisation, as well as covering (i.e. disguising, concealing) the true intentions, actions and deeds of this person. Moreover, the documents that require the agent's review are drafted in such a way as to avoid their familiarisation with information that constitutes a state secret. In the course of this task, it is important to define the scope of a special task. On the one hand, substantive law stipulates that it is not a criminal offence for a person who, in accordance with the law, performed a special task by participating in an organised group or criminal organisation in order to prevent or detect their criminal activities to cause damage to law enforcement interests, on the other hand, such a person shall be criminally liable for a crime committed intentionally and combined with violence against the victim, or a serious crime committed intentionally and involving the infliction of serious bodily harm to the victim or other grave or especially grave consequences. **Conclusions.** It is concluded that the head of a pre-trial investigation body at the stage of approval of the decision on a special task should study and ensure both organisational measures for implementation (selection, training, safety and maintenance of proper professional and psychological qualities, rehabilitation and adaptation of performers, and involvement of operational, operational and technical service's capabilities); material and technical support; the use of pre-identified (marked) or bogus (imitation) means), and procedural activities that define the clear scope of a special task considering the following factors: a) minimisation of possible damage to law enforcement interests; b) most effective performance of the tasks of criminal proceedings; c) keeping reliable information about a person secret.

Key words: head of a pre-trial investigation body, covert investigative (search) actions, special task to detect criminal activities of an organised group or a criminal organisation, scope of a special task.

1. Introduction

Covert investigations are a fairly new area of investigative activities aimed at obtaining information about the illegal activities of individuals (groups of individuals), which results in problems for investigative units related to their conduct, therefore, it is the head of the pre-trial investigation body who shall organise and plan the tactics of covert investigative (search) actions, take a leading role in obtaining evi-

dence and provide methodological assistance in their conduct.

Although the mandatory elements of procedural actions are defined by the legislator, some of them cannot be provided for by the law due to the uniqueness of each covert investigative (search) action, and as a result, this leads to violations of the CPC of Ukraine, including unlawful restriction of rights and freedoms of a person (Komarnytska, 2015, pp. 17-26).

Therefore, conducting covert investigative (search) actions by investigators and using their results in criminal proceedings requires special control by the head of the pre-trial investigation body as a participant in criminal proceedings responsible for: comprehensive, full and impartial investigation of the circumstances of the criminal proceedings and identification of circumstances that exonerate the suspect, the accused, as well as mitigate his or her punishment (CPC of Ukraine, Article 9, part 2); organisation of the pre-trial investigation, including the legality and timeliness of its "covert" stage (CPC of Ukraine, Article 39, part 1); taking measures to eliminate violations of the law in case of their admission by the investigator, including during covert investigative (search) actions (CPC of Ukraine, Article 39, part 2, para. 4).

Some aspects of exercising full powers by the head of the pre-trial investigation body in the course of CISA have been studied in the dissertations by A.S. Omelianenko "Exercise of the investigator's full powers to conduct covert investigative (search) actions" (2015), Yu.V. Kolesnyk "Investigative and covert investigative (search) actions as forensic means of investigator's activities in pre-trial investigation" (2016), O.M. Salo "Exercise of powers by the head of pre-trial investigation body in conducting covert investigative (search) actions" (2018). However, the problems of exercising the full powers of the head of a pre-trial investigation body in the course of a special task to detect criminal activities of an organised group or a criminal organisation, in particular, his/her direct participation in the organisation of such covert investigative (search) action have not been studied.

The purpose of the article is to study certain aspects of exercising the full powers of the head of a pre-trial investigation body in the course of a covert investigative (search) action such as a special task to detect criminal activities of an organised group or a criminal organisation.

2. Particularities of the regulatory formation of the institution of covert investigative (search) actions

For most European countries, procedural actions that are similar to domestic covert investigative (search) actions have long been commonplace. It should be noted that at the time of adoption of the previous CPC (1960s), covert activities were considered synonymous with state secrets. And the term "covert" was not familiar and acceptable to the ideology of criminal procedure and was not used in the CPC of 1960. On the contrary, the criminal procedure was associated with the principle of publicity and openness. The legislation of the time did not provide for covert investigative (search)

actions as a type of investigative action (Vilhushynskyi, 2014, pp. 12-15).

Moreover, the state had an effective system of control over the individual, as well as tacit control in the form of total monitoring (operational and investigative activities) of public life to obtain any information, which was virtually unknown to society. Search operations in the system of proving were used only as orientation information, which required further legalisation through formal public (sometimes understood as legal) investigative actions.

However, over time, the regulatory mechanism for search operations, which had previously been in the "shadow" of departmental instructions and orders, most of which were restricted and unknown to citizens, was naturally reflected in the CPC. Therefore, it took almost four decades for the amendments to Articles 65, 66, 187 of the CPC (1960) to be introduced in 2001, according to which the records of search operations with annexes obtained in the established manner were allowed to be recognised as sources of evidence, and the interception of information from communication channels was directly granted the status of an investigative action.

The model of investigative proving that existed in the CPC (1960), which was based on strict regulatory mechanism for and definition of the concepts of proving and evidence, retrospective knowledge of the circumstances of the crime, the prosecution's monopoly on the formation of evidence in the case, the presumption of proving as a result of any investigative action, was replaced by the model of logical proving (Kostin, 2003, p. 9).

According to this model, proving is of an exclusively logical nature and is carried out only in court. The formation and verification of factual data is an undoubtedly important factual (informational) basis for logical proving. Furthermore, the emphasis in procedural guarantees of observance of the law during covert investigative (search) actions has been shifted from mechanical compliance with the procedural form to the institutions of judicial control and sanctions for declaring the obtained factual data inadmissible. For example, the ground for conducting and/or using the results of most covert investigative (search) actions is obtaining a court order (Mirkovets, 2014).

The institution of covert investigative (search) actions is organically integrated into the model of logical proving, conceptually adopted by the new CPC of Ukraine.

3. The role of the head of the pre-trial investigation body in the preparation and conduct of covert investigative (search) actions

Institution of covert investigative (search) actions has led to common cases of a criminal

act provoked by law enforcement officers themselves in investigative and judicial practice. As a rule, such provocative actions take place among criminal offences in the field of drug trafficking and corruption-related criminal offences related to obtaining undue advantage.

As a result, the head of the pre-trial investigation body should pay special attention to compliance with the requirements of the CPC of Ukraine regarding the existence of grounds for covert investigative (search) actions.

Moreover, at the procedural level, the head of the pre-trial investigation body is only authorised to approve the investigator's decision to conduct a covert investigative (search) action, that is, a special task to detect criminal activities of an organised group or a criminal organisation (CPC of Ukraine, Article 272, part 2).

A special task to detect criminal activities of an organised group or criminal organisation is a set of actions carried out in accordance with the requirements of Article 272 of the CPC of Ukraine involving full-time and non-regular covert employees who are infiltrated into organised groups and criminal organisations, illegal armed groups for a short time (tactically) under the cover of a legend.

Pursuant to clause 1.13 of the Instruction on the organisation of covert investigative (search) actions and the use of their results in criminal proceedings, the performance of a special task to detect criminal activities of an organised group or criminal organisation consists in the organisation by the investigator and the operational unit of the infiltration of a person authorised by them, who performs a special task, in accordance with the law, to an organised group or criminal organisation under the cover of a legend to obtain things and documents, information about its structure, ways and methods of its criminal activities, which are relevant to the investigation of a crime or crimes committed by these groups (Order of the General Prosecutor's Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Council of Ukraine, the Ministry of Finance of Ukraine, the Administration of the DPS of Ukraine and the Ministry of Justice of Ukraine On the approval of the Instructions on the organization of undercover investigative (search) actions and the use of their results in criminal proceedings, 2012).

Such special task as a covert investigative (search) action is carried out by these persons on the ground of a relevant decision (investigator's decision agreed with the head of the pre-trial investigation body or prosecutor's decision) with the reliable information about the person kept secret, justification of the scope

of the special task and the use of special bogus (imitation) means.

The purpose of this set of measures is to obtain significant information by an undercover officer who has been infiltrated into the criminal environment through direct communication with persons of interest and has a number of general and special tactics.

In this regard, when approving the relevant decision by the head of the pre-trial investigation body, the focus should be on the following:

1. Keep reliable information about the person in secret, as well as develop an appropriate legend for infiltrating an authorised person into an organised group or criminal organisation (legend);

2. Define and justify the scope of the special task;

3. Determine and prove expediency of using special bogus (imitation) means;

4. Ensure that the qualification and circumstances of the criminal proceedings under investigation comply with the purpose of the measure - only in respect of grave or especially grave crimes committed by an organised group or criminal organisation.

Generally speaking, a legend is far-fetched information about yourself, someone who performs secret tasks. The use of a legend as a prerequisite for introducing a covert officer into an organised criminal group is specified in part 3 of Article 13 of the Law of Ukraine "On the Organisational and Legal Basis of Combating Organised Crime" (1993).

Therefore, keeping reliable information about a person secret should consist of changing (i.e., presenting in a false, incorrect form) the person's data and the purpose of his/her infiltration into the relevant organised group or criminal organisation, as well as covering (i.e., disguising, concealing) the true intentions, actions and deeds of this person.

Moreover, the documents that require the agent's review are drafted in such a way as to avoid their familiarisation with information that constitutes a state secret.

It is important to define the scope of a special task. On the one hand, substantive law stipulates that it is not a criminal offence for a person who, in accordance with the law, performed a special task by participating in an organised group or criminal organisation in order to prevent or detect their criminal activities to cause damage to law enforcement interests, on the other hand, such a person shall be criminally liable for a crime committed intentionally and combined with violence against the victim, or a serious crime committed intentionally and involving the infliction of serious bodily harm to the victim or other grave or especially grave consequences.

In addition, a covert employee is not liable for any damage or losses caused by him if his/her actions were necessary for the execution of the task, and the damage or losses caused by his/her actions are reimbursed by the state budget.

Consequently, the performance of a special task requires serious and thorough preparation, which includes such organisational measures as careful selection and training of a candidate, management and control of his/her activities, material and technical support of the agent operation, and adaptation of the person to life in normal conditions after its completion.

The peculiarity of organising a special task is to ensure the integrated use of forces and means in order to solve the tasks that determine the use of this type of activities. Most of these measures require preliminary preparation using qualified methods (operative guideline, visual observation of a person, place, thing, preventive and search measures).

4. Conclusions

Therefore, at the stage of approval of the decision on a special task, the head of a pre-trial investigation body should study and ensure both organisational measures for implementation (selection, training, safety and maintenance of proper professional and psychological qualities, rehabilitation and adaptation of performers, and involvement of operational, operational and technical service's capabilities); material and technical support; the use of pre-identified (marked) or bogus (imitation) means), and procedural activities that define the clear scope of a special task considering the following factors: a) minimisation of possible damage to law enforcement interests; b) most effective performance of the tasks of criminal proceedings; c) keeping reliable information about a person secret.

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ПОВНОВАЖЕННЯ КЕРІВНИКА ОРГАНУ ДОСУДОВОГО РОЗСЛІДУВАННЯ ПІД ЧАС ВИКОНАННЯ СПЕЦІАЛЬНОГО ЗАВДАННЯ З РОЗКРИТТЯ ЗЛОЧИННОЇ ДІЯЛЬНОСТІ ОРГАНІЗОВАНОЇ ГРУПИ ЧИ ЗЛОЧИННОЇ ОРГАНІЗАЦІЇ

Анотація. Мета. Метою статті є дослідження окремих аспектів реалізації повноважень керівника органу досудового розслідування під час проведення такої негласної слідчої (розшукової) дії, як виконання спеціального завдання з розкриття злочинної діяльності організованої групи чи злочинної організації. **Результати.** Досліджено особливості реалізації повноважень керівника органу досудового розслідування під час виконання спеціального завдання з розкриття злочинної діяльності організованої групи чи злочинної організації. Обґрунтовано необхідність визначення чітких меж виконання спеціального завдання. Наголошено, що збереження в таємниці достовірних відомостей про особу має полягати у зміні (тобто поданні в неправдивому, неправильному вигляді) даних особи і мети її проникнення у відповідну організовану групу чи злочинну організацію, а також у прикритті (тобто маскуванні, приховуванні) справжніх намірів, дій та вчинків цієї особи. Своєю чергою документи, які потребують ознайомлення агента, складаються таким чином, щоб уникнути їх ознайомлення з інформацією, що становить державну таємницю. Велике значення у виконанні вказаного завдання має саме визначення меж спеціального завдання. З одного боку, нормами матеріального права передбачено, що не є кримінальним правопорушенням вимушене заподіяння шкоди правоохоронюваним інтересам особою, яка відповідно до закону виконує спеціальне завдання, беручи участь в організованій групі чи злочинній організації з метою попередження чи розкриття їх кримінально-протиправної діяльності, з іншого – така особа підлягає кримінальній відповідальності за злочин, вчинений умисно і поєднаний з насильством над потерпілим, або тяжкий злочин, вчинений умисно і пов'язаний зі спричиненням тяжкого тілесного ушкодження потерпілому або настанням інших тяжких або особливо тяжких наслідків. **Висновки.** Зроблено висновок, що керівником органу досудового розслідування на етапі погодження рішення щодо виконання спеціального завдання мають бути вивчені та забезпечені як організаційні заходи реалізації (добір, підготовка, безпека та підтримання належних професійних і психологічних якостей, реабілітація та адаптація виконавців, залучення можливостей оперативної та оперативно-технічної служби; матеріальне і технічне забезпечення; використання заздалегідь ідентифікованих (помічених) або несправжніх (імітаційних) засобів), так і процесуальні з визначенням чітких меж виконання спеціального завдання з обов'язковим урахуванням таких чинників: а) мінімізації можливої шкоди правоохоронюваним інтересам; б) найбільш ефективного виконання завдань кримінального провадження; в) збереження у таємниці достовірних відомостей про особу.

Ключові слова: керівник органу досудового розслідування, негласні слідчі (розшукові) дії, спеціальне завдання з розкриття злочинної діяльності організованої групи чи злочинної організації, межі спеціального завдання.

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